

**BEFORE THE STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS
STATE OF MISSOURI**

**ORDER ISSUING PROBATED FUNERAL ESTABLISHMENT, SELLER AND
PROVIDER LICENSES TO**

NEPTUNE MANAGEMENT CORP. d/b/a NEPTUNE SOCIETY

The Missouri State Board of Embalmers and Funeral Directors (the “Board”) and pursuant to Section 324.038, RSMo¹, issues this order granting **PROBATED FUNERAL ESTABLISHMENT, SELLER AND PROVIDER LICENSES**, to **NEPTUNE MANAGEMENT CORP. d/b/a NEPTUNE SOCIETY** (“Neptune Management” or “Licensee”) operating at 8438 Ward Parkway, Kansas City, Missouri 64114.

As set forth in Section 324.038, RSMo, Licensee may submit a written request for hearing to the Administrative Hearing Commission seeking review of the Board’s decision set forth in this Order. Such written request must be filed with the Administrative Hearing Commission within 30 days of the date the Board mails this Order to Licensee. The written request should be addressed to the Administrative Hearing Commission, Room 640, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102-1557. Any such request should set forth that the applicant is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to Licensee’s profession. If such review is requested, a hearing shall be held pursuant to Chapter 621, RSMo. A Commissioner of the Administrative Hearing Commission will preside over the hearing. The hearing will be on the record and recorded by a court reporter. At the hearing, Licensee shall have the right to present testimony, call witnesses on its behalf, introduce evidence, cross-examine any witnesses called by the

¹ All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.

Board, and object to any evidence introduced by the Board and make legal argument to the Commission. Following the hearing, the Administrative Hearing Commission will issue an order including findings of fact, conclusions of law and a decision based on the evidence admitted at the hearing. A copy of the Administrative Hearing Commission's order will be delivered to the parties. Chapter 536, RSMo, sets forth the procedures for review of the order of the Administrative Hearing Commission.

If no written request for review is filed with the Administrative Hearing Commission within the 30-day period, the right to seek review of the Board's decision shall be considered waived. Section 324.038.2, RSMo. Should Licensee make written request for review of this Order, the terms and conditions of this Order shall remain in full force and effect unless and until such time as the Administrative Hearing Commission or reviewing court orders otherwise.

Relevant Statutes

1. Section 324.038, RSMo, authorizes the Board to issue a license subject to probation in lieu of denial and states:

1. Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

2. The board shall notify the applicant in writing of the terms of the probation imposed, the basis therefor, and the date such action shall become effective. The notice shall also advise the applicant of the right to a hearing before the administrative hearing commission, if the applicant files a complaint with the administrative hearing commission within thirty days of the date of delivery or mailing by certified mail of written notice of the probation. If the board issues a probated license, the applicant may file, within thirty days of the date of delivery or mailing by certified mail of written notice of the probation, a written complaint

with the administrative hearing commission seeking review of the board's determination. Such complaint shall set forth that the applicant or licensee is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to his or her profession. Upon receipt of such complaint the administrative hearing commission shall cause a copy of such complaint to be served upon the board by certified mail or by delivery of such copy to the office of the board, together with a notice of the place of and the date upon which the hearing on such complaint will be held. Hearings shall be held pursuant to chapter 621. The burden shall be on the board to demonstrate the existence of the basis for imposing probation on the licensee. If no written request for a hearing is received by the administrative hearing commission within the thirty-day period, the right to seek review of the board's decision shall be considered waived.

3. If the probation imposed includes restrictions or limitations on the scope of practice, the license issued shall plainly state such restriction or limitation. When such restriction or limitation is removed, a new license shall be issued.

2. Section 333.061, RSMo, requires a license to operate as a funeral establishment in

Missouri and states:

1. No funeral establishment shall be operated in this state unless the owner or operator thereof has a license issued by the board.

2. A license for the operation of a funeral establishment shall be issued by the board, if the board finds:

(1) That the establishment is under the general management and the supervision of a duly licensed funeral director;

(2) That all embalming performed therein is performed by or under the direct supervision of a duly licensed embalmer;

(3) That any place in the funeral establishment where embalming is conducted contains a preparation room with a sanitary floor, walls and ceiling, and adequate sanitary drainage and disposal facilities including running water, and complies with the sanitary standard prescribed by the department of health and senior services for the prevention of the spread of contagious, infectious or communicable diseases;

(4) Each funeral establishment shall have available in the preparation or embalming room a register book or log which shall be available at all times in full view for the board's inspector and the name of each body embalmed, place, if other than at the establishment, the date and time that

the embalming took place, the name and signature of the embalmer and the embalmer's license number shall be noted in the book; and

(5) The establishment complies with all applicable state, county or municipal zoning ordinances and regulations.

3. The board shall grant or deny each application for a license pursuant to this section within thirty days after it is filed. The applicant may request in writing up to two thirty-day extensions of the application, provided the request for an extension is received by the board prior to the expiration of the thirty-day application or extension period.

4. Licenses shall be issued pursuant to this section upon application and the payment of a funeral establishment fee and shall be renewed at the end of the licensing period on the establishment's renewal date.

5. The board may refuse to renew or may suspend or revoke any license issued pursuant to this section if it finds, after hearing, that the funeral establishment does not meet any of the requirements set forth in this section as conditions for the issuance of a license, or for the violation by the owner of the funeral establishment of any of the provisions of section 333.121. No new license shall be issued to the owner of a funeral establishment or to any corporation controlled by such owner for three years after the revocation of the license of the owner or of a corporation controlled by the owner. Before any action is taken pursuant to this subsection the procedure for notice and hearing as prescribed by section 333.121 shall be followed.

3. Section 333.330, RSMo, authorizes the Board to deny an application for a funeral establishment license and states, in relevant portion:

1. The board may refuse to issue any certificate of registration or authority, permit, or license required under this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit, or license required by this chapter, or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

* * *

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant thereto;

* * *

(8) Disciplinary action against the holder of a license or other right to practice any profession regulated by this chapter granted by another state, territory, federal agency, or country upon grounds for which revocation or suspension is authorized in this state;

* * *

(19) Violation of any of the provisions of chapter 193, 194, 407, or 436

4. Section 333.315.1, RSMo, requires a license to operate as a provider of preneed contracts and states:

1. No person shall be designated as a provider or agree to perform the obligations of a provider under a preneed contract unless, at the time of such agreement or designation, such person is licensed as a preneed provider by the board. Nothing in this section shall exempt any person from meeting the licensure requirements for a funeral establishment as provided in this chapter.

5. Section 333.320, RSMo, requires a license to operate as a seller and states:

1. No person shall sell, perform, or agree to perform the seller's obligations under, or be designated as the seller of, any preneed contract unless, at the time of the sale, performance, agreement, or designation, such person is licensed by the board as a seller and authorized and registered with the Missouri secretary of state to conduct business in Missouri.

2. An applicant for a preneed seller license shall:

(1) File an application on a form established by the board and pay an application fee in an amount established by the board by rule;

(2) Be an individual resident of Missouri who is eighteen years of age or older, or a business entity registered with the Missouri secretary of state to transact business in Missouri;

(3) If the applicant is a corporation, each officer, director, manager, or controlling shareholder, shall be eligible for licensure if they were applying for licensure as an individual;

(4) Meet all requirements for licensure;

(5) Identify the name and address of a custodian of records responsible for maintaining the books and records of the seller relating to preneed contracts;

(6) Identify the name and address of each licensed provider that has authorized the seller to designate such person as a provider under a preneed contract;

(7) Have established, as grantor, a preneed trust or an agreement to utilize a preneed trust with terms consistent with sections 436.400 to 436.520. A trust shall not be required if the applicant certifies to the board that the seller will only sell insurance-funded or joint account-funded preneed contracts;

(8) Identify the name and address of a trustee or, if applicable, the financial institution where any preneed trust or joint accounts will be maintained; and

(9) File with the board a written consent authorizing the state board to inspect or order an investigation, examination, or audit of the seller's books and records which contain information concerning preneed contracts sold by or on behalf of the seller.

3. Each seller shall apply to renew his or her license on or before October thirty-first of each year or a date established by the division of professional registration pursuant to section 324.001. A license which has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

(1) File an application for renewal on a form established by the board by rule;

(2) Pay a renewal fee in an amount established by the board by rule; and

(3) File annually with the board a signed and notarized annual report as required by section 436.460.

4. Any license which has not been renewed as provided by this section shall expire. A licensee who fails to apply for renewal within two years of the renewal date may apply for reinstatement by satisfying the requirements of subsection 3 of this section and paying a delinquent fee as established by the board by rule.

6. Relevant portions of 20 CSR 2120-2.070 state as follows:

(13) A Missouri licensed funeral establishment may use only its registered name in any advertisement or holding out to the public.

(A) All signs, stationery and any advertising in newspapers, publications or otherwise, shall include the name(s) of the Missouri licensed funeral establishment registered with the board. Advertisements that do not comply with this section shall be deemed misleading for the purposes of section 333.121, RSMo.

(B) It shall not be deemed to be misleading if a listing appears in a telephone directory or national directory if the name of the Missouri licensed funeral establishment changes after the listing has been placed, but before a new directory is published.

7. Missouri's right of sepulcher is codified in Section 194.119, RSMo, that states:

1. As used in this section, the term "right of sepulcher" means the right to choose and control the burial, cremation, or other final disposition of a dead human body.

2. For purposes of this chapter and chapters 193, 333, and 436, and in all cases relating to the custody, control, and disposition of deceased human remains, including the common law right of sepulcher, where not otherwise defined, the term "next-of-kin" means the following persons in the priority listed if such person is eighteen years of age or older, is mentally competent, and is willing to assume responsibility for the costs of disposition:

(1) An attorney in fact designated in a durable power of attorney wherein the deceased specifically granted the right of sepulcher over his or her body to such attorney in fact;

(2) For a decedent who was on active duty in the United States military at the time of death, the person designated by such decedent in the written instrument known as the United States Department of Defense Form 93, Record of Emergency Data, in

accordance with P.L. 109-163, Section 564, 10 U.S.C. Section 1482;

(3) The surviving spouse;

(4) Any surviving child of the deceased. If a surviving child is less than eighteen years of age and has a legal or natural guardian, such child shall not be disqualified on the basis of the child's age and such child's legal or natural guardian, if any, shall be entitled to serve in the place of the child unless such child's legal or natural guardian was subject to an action in dissolution from the deceased. In such event the person or persons who may serve as next-of-kin shall serve in the order provided in subdivisions (5) to (9) of this subsection;

(5) (a) Any surviving parent of the deceased; or

(b) If the deceased is a minor, a surviving parent who has custody of the minor; or

(c) If the deceased is a minor and the deceased's parents have joint custody, the parent whose residence is the minor child's residence for purposes of mailing and education;

(6) Any surviving sibling of the deceased;

(7) The next nearest surviving relative of the deceased by consanguinity or affinity;

(8) Any person or friend who assumes financial responsibility for the disposition of the deceased's remains if no next-of-kin assumes such responsibility;

(9) The county coroner or medical examiner; provided however that such assumption of responsibility shall not make the coroner, medical examiner, the county, or the state financially responsible for the cost of disposition.

3. The next-of-kin of the deceased shall be entitled to control the final disposition of the remains of any dead human being consistent with all applicable laws, including all applicable health codes.

4. A funeral director or establishment is entitled to rely on and act according to the lawful instructions of any person claiming to be the next-of-kin of the deceased; provided however, in any civil cause of action

against a funeral director or establishment licensed pursuant to this chapter for actions taken regarding the funeral arrangements for a deceased person in the director's or establishment's care, the relative fault, if any, of such funeral director or establishment may be reduced if such actions are taken in reliance upon a person's claim to be the deceased person's next-of-kin.

5. Any person who desires to exercise the right of sepulcher and who has knowledge of an individual or individuals with a superior right to control disposition shall notify such individual or individuals prior to making final arrangements.

6. If an individual with a superior claim is personally served with written notice from a person with an inferior claim that such person desires to exercise the right of sepulcher and the individual so served does not object within forty-eight hours of receipt, such individual shall be deemed to have waived such right. An individual with a superior right may also waive such right at any time if such waiver is in writing and dated.

7. If there is more than one person in a class who are equal in priority and the funeral director has no knowledge of any objection by other members of such class, the funeral director or establishment shall be entitled to rely on and act according to the instructions of the first such person in the class to make arrangements; provided that such person assumes responsibility for the costs of disposition and no other person in such class provides written notice of his or her objection.

8. Regulation 20 CSR 2120-2.071 requires authorization to cremate and states, in relevant portion:

(3) Each Missouri licensed funeral establishment that contains a crematory area shall maintain permanent records which shall include:

(A) A written authorization for cremation executed prior to cremation by the person entitled to custody or control of the body which shows the time and date when authorization for cremation was given; and

* * *

(6) If the deceased gave written authorization to cremate and did not revoke the authorization, that authorization shall satisfy the

requirement for authorization to cremate. If the deceased did not give written authorization to cremate, the next of kin of the deceased or the county coroner or medical examiner pursuant to Chapter 58, RSMo, may give authorization to cremate. Authorization to cremate given prior to the death may be in any written document, including a preneed contract. The next of kin, for purposes of this rule, shall be as defined in section 194.119.2, RSMo.

(7) If the Missouri licensed funeral establishment receives no authorization for cremation from any of the persons identified in section (6) of this rule, the Missouri licensed funeral establishment may proceed with cremation if it has attempted to locate a person from whom authorization to cremate may be obtained for at least ten (10) days and it has a written statement from city, county, or state law enforcement officials that they have assisted the Missouri licensed funeral establishment in attempting to locate a person from whom authorization for cremation could be obtained but have been unable to locate such a person. However, the Missouri licensed funeral establishment may proceed with cremation prior to the elapse of twenty four (24) hours if the deceased died as a result of a communicable disease, was subject to isolation at the time of death, and has not been properly embalmed in accordance with 19 CSR 20-24.010.

Parties and Application for Licensure

9. The Board is an agency of the State of Missouri created and established pursuant to Section 333.151, RSMo, and vested with the authority to execute and enforce the provisions of Chapter 333 and portions of Chapter 436, RSMo.

10. Neptune Management Corp. is a California corporation registered as a foreign corporation authorized to conduct business in Missouri with its principal place of business of 1250 Pine Island Road, Suite, 500, Plantation, Florida 33324. Its registered agent in Missouri is National Corporate Research, Ltd., 222 East Dunklin, Suite 102, Jefferson City, Missouri 65101. Neptune Management has applied to the Board for licenses to conduct business at 8438 Ward Parkway, Kansas City, Missouri 64114.

11. Neptune Management signed its “Application for Funeral Establishment License” (the “Establishment Application”) on December 19, 2012 and the Board received the Application on December 28, 2012. Tim Nicholson signed the Establishment Application on behalf of Neptune Management. Neptune requested extensions of time for which the Board to consider its Application per Section 333.061, RSMo.

12. Neptune Management signed its “Provider Application” on December 19, 2012, and the Board received it on December 28, 2012 (the “Provider Application”). Tim Nicholson signed the Provider Application on behalf of Neptune Management.

13. Neptune Management signed its “Seller Application on December 19, 2012, and the Board received it on December 28, 2012 (the “Seller Application”). Tim Nicholson signed the Seller Application on behalf of Neptune Management.

14. Neptune Management previously held the following licenses issued by the Board:
- a. Registered preneed seller number 200307868 from April 8, 2003 until August 28, 2009.
 - b. Preneed seller license number 2009039881 from August 29, 2009 through November 19, 2010.
 - c. Registered preneed provider number 2005002807 from February 4, 2005 through August 28, 2009.
 - d. Registered preneed provider number 2009039716 from December 31, 2009 through November 19, 2010.
 - e. Funeral establishment license number 2005002808 from February 4, 2005 until May 23, 2005.

- f. Funeral establishment license number 2005015038 from May 23, 2005 until November 19, 2010.

Basis for Probation

15. In the Establishment Application, the Provider Application and the Seller Application, Neptune Management disclosed discipline imposed on it by other states for conduct that would be grounds for which suspension or revocation is authorized in Missouri.

16. On October 27, 2010, the Washington State Funeral and Cemetery Board and Neptune Management entered into an “Agreed Findings of Fact, Conclusions of Law and Order” that imposed discipline of 1 year suspension, stayed pending compliance with terms and conditions and imposed a \$5,000 fine on Neptune Management (the “2010 Agreed Order”). The agreed cause for discipline being that Neptune Management cremated a body before receipt of a signed authorization to cremate. *In Re License to Practice as a Funeral Establishment of: Neptune Society, Licensee, License No. 443*, Case number 2008-08-2600-00FDE (2010).

17. The conduct that formed the basis for the discipline imposed by the 2010 Agreed Order would be grounds for revocation or suspension in this state for violation of the provisions of Chapter 333, RSMo, and its accompanying regulations.

18. On December 22, 2011, the Washington State Funeral and Cemetery Board and Neptune entered into an “Agreed Findings of Fact, Conclusions of Law and Order (License to Practice as a Funeral Establishment)” that imposed discipline on Neptune Management Corp of one year suspension, stayed pending compliance with terms and conditions, and imposed a fine

of \$2,500 (the “2011 Agreed Order”). In this Consent Order, the parties agreed that Neptune Management had cremated a body in disregard of the state’s right of sepulcher statute. *In Re Matter of the License to Practice as a Funeral Establishment of: Neptune Society Licensee, License No. 438, Case No. 2009-12-2600-00FDE, Washington State Funeral and Cemetery Board (2011)*

19. The conduct for which the 2011 Agreed Order imposed discipline would be grounds for which revocation or suspension is authorized in Missouri for violation of the provisions of the right of sepulcher statutes in Missouri found in Chapter 194, RSMo.

20. By Consent Order issued on September 11, 2012, the Tennessee State Board of Funeral Directors and Embalmers and Neptune Man imposed discipline against Neptune Management and imposed a \$500 penalty due to Neptune Management advertising as a licensed funeral establishment before it held such a license (the “2012 Consent Order”). *In Re Neptune Society, 1187 Old Hickory Boulevard, Suite 100, Brentwood, Tennessee, Case number 12-FUN-RBS-2012007661, Tennessee State Board of Funeral Directors and Embalmers (August 31, 2012.*

21. The conduct for which Tennessee imposed discipline in the 2012 Consent Order is conduct that would be grounds for which revocation or suspension is authorized in this state in that is in violation of the provisions of Chapter 333 and the regulations promulgated thereunder.

Statutory Basis for Denial

22. The discipline of Neptune Management in Washington and Tennessee in the 2010 Agreed Order, the 2011 Agreed Order and the 2012 Consent Order provides basis for the Board to deny Neptune Management’s applications to the Board for a funeral establishment, seller and provider licenses pursuant to cause set forth in Sections 333.330.2(8), RSMo.

23. The Board finds that issuance of probated funeral establishment, seller and provider licenses, subject to certain terms and conditions, in lieu of denial, will ensure protection of the public.

Issuance of Probated Licenses Subject to Terms and Conditions

The Board, in lieu of denial, hereby issues a funeral establishment license, a seller license and a provider license to Neptune Management Corp. d/b/a Neptune Society to conduct business in Missouri at 8438 Ward Parkway, Kansas City, Missouri 64114 each on **PROBATION** for a period of **ONE YEAR** (the "Disciplinary Period") subject to the terms and conditions contained in this Order and set forth below.

Terms and Conditions of Probation

24. Licensee shall comply with the following terms and conditions of probation during the Disciplinary Period:

- a. Licensee shall keep the Board informed of Licensee's current telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) business days of any change in this information. If Licensee utilizes e-mail, Licensee shall provide the Board with its current and active e-mail address;
- b. Licensee shall comply with all applicable provisions of Chapters 194, 333 and 436, RSMo, all Board regulations and all federal, state and local laws and regulations related to business operations in the funeral and death care industry including all insurance and security laws applicable to any insurance or annuity used to fund preneed funeral contracts;

- c. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission;
- d. Licensee shall meet in person with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice. Any such meetings shall be at the Board's discretion;
- e. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions;
- f. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active; and
- g. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of probation.

25. Upon the expiration of the Disciplinary Period and successful completion of the probation, Licensee's licenses shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Licensee has violated any term or condition of this Order, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, impose additional probation, or otherwise lawfully discipline Licensee's licenses.

26. The Board shall enter no order imposing further discipline on any of Licensee's licenses without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

27. If the Board determines that Licensee has violated a term or condition of this Order, and that violation would also be actionable in a proceeding before the Administrative Hearing Commission or in a circuit court, the Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Order in its determination of appropriate legal actions concerning such violation(s).

28. If any alleged violation of this Order occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of probation occurred and, if so, may impose further discipline on the licenses of Licensee. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of probation occurred.

29. This Order of the Board shall be maintained as an open and public record of the Board as provided in Chapters 333, 610 and 324, RSMo.

IT IS SO ORDERED.

Dated: 3.18.13

Sandy Sebastian
Sandy Sebastian
Executive Director
State Board of Embalmers and Funeral Directors